

Rural Telephone Coalition
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of)	
)	
Access Charge Reform)	CC Docket 96-262
)	
Price Cap Performance Review for Local Exchange Carriers)	CC Docket No. 94-1
)	
Transport Rate Structure and Pricing)	CC Docket No. 91-213
)	
Usage of the Public Switched Network by Information Service and Internet Access Providers)	CC Docket No. 96-263
)	

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THE RURAL TELEPHONE COALITION COMMENTS

The Rural Telephone Coalition (RTC) submits these comments on the Notice of Inquiry phase of the above-captioned proceeding. The RTC is comprised of the National Rural Telecom Association (NRTA), the National Telephone Cooperative Association (NTCA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO). Together the three associations represent more than 850 small and rural telephone companies.

The Commission is considering whether information providers, generally described as enhanced service providers (ESPs), should pay for access when, for their information services, they make interstate use of the public switched network provided by incumbent local exchange carriers (LECs). The Commission does not plan to require ESPs to pay access charges under the

Rural Telephone Coalition March 24, 1997

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existing rules, which it has decided are seriously flawed. In the past it has "temporarily" refrained from imposing access charge responsibilities on the ESPs (see, paras. 285, 288) because information services were relatively new at the time. Now they are flourishing and continue to grow at a rapid pace. The Commission has received extensive information about the heavy use these services make of the public switched network (see, e.g., paras. 286, 313), although they have, so far, been spared the burden of paying for the costs they cause. Indeed, network congestion has become a vexing problem for ILECs (ibid).

Many small and rural telephone companies are making Internet service available in their communities, either by becoming ESPs themselves or by providing the telecommunications platform for their customers to reach another Internet provider. Accordingly, many RTC ILECs are concerned about the costs and congestion that ESPs cause, but concurrently recognize the importance of maintaining and developing affordable nationwide access to the nation's vital information resources. Thus, while the RTC strongly believes that the interstate portion of costs caused by ESPs should not be left for other carriers and end users to absorb, we recognize that elimination of the "temporary" exemption should not impose an excessive burden on the information industry. We recommend that the Commission apply nondiscriminatory access charges to ESPs to recover the costs they impose on the public switched network. However, in the event that ESPs prove in this proceeding that they require some part of the discount and subsidy they have enjoyed while the industry developed, the RTC urges the Commission to comply with the Act's mandate to make all such discounts and subsidies explicit and to fund them with support drawn from all providers of interstate services.

ESP Use of the Public Switched Network Causes Costs

The Commission recognizes (para. 282) that "the Internet and other interactive computer networks are making increasing use of the public switched network and that continued growth in usage will increase the effects on the public switched network. It also admits (para. 285) that its different treatment of enhanced services providers allows them to pay far less than other users of the network, including a flat monthly rate for connections "regardless of the amount of usage they generate." The NPRM even points (para. 286) to showings that, by letting such users impose costs on the network similar to those imposed by access charge bearing services without paying an equivalent share of the costs, the current structure, "contributes to the congestion of incumbent LEC networks" and to claims that longer holding times cause costs for network upgrades without covering the additional cost.

Freedom from Access Charges provides an Implicit Subsidy to ESPs

The Commission tentatively concluded (para. 283) that information service providers should not be required to pay access charges like any other cost causer until after the Notice of Inquiry proceeding about "the implications of usage of the public switched network by information service and Internet access providers." Its rationale is (para. 287) that ESPs claim they are paying their costs, that higher charges might stifle information service growth and (para. 288) that access charges have not yet been purged of non-cost-based rates and inefficient rate structures.

Since the Commission intends to correct the flaws in access charges in the rulemaking phase of this proceeding and has always viewed the exemption as temporary, it is not apparent to the RTC why there must be a full separate proceeding to impose the same charges on ESPs for

the same network use. Thus, the RTC respectfully suggests that the Commission should quickly complete whatever further rulemaking it intends and expeditiously require ESPs to pay the same charges that other cost causers pay. Even if the record demonstrates the need for a discount subsidy for ESP-caused costs, the Commission should not use access charges as the vehicle to shift cost recovery onto other end users. It should act soon to prevent further market distortions and to terminate or replace the implicit subsidy inherent in excusing ESPs from paying access charges for the costs they cause.

Implicit Subsidy of the ESP Industry Is Now Unlawful

The 1996 Act does not give the Commission the freedom it enjoyed in the past to prolong its temporary preferential treatment for ESPs as a fledgling industry. First, if the Commission wants to subsidize the ESP industry to advance nationwide "access to advanced telecommunications services," a legitimate purpose under Section 254(b)(3), the Commission must use the Joint Board process to define universal service to include the service it wishes to subsidize. Next, it must compensate carriers designated as "eligible telecommunications carriers" by their state commissions out of the federal support mechanism funded by nondiscriminatory contributions from all carriers that provide interstate services, pursuant to Section 254(e).

Moreover, simply excusing one class of customers from paying the costs caused by use and, in effect, resale of public switched network services as part of its information services, violates the Act by perpetuating an "implicit" subsidy because Sec. 254(e) now mandates "explicit" support. Unless the providing carrier is required to provide service without compensation from anybody, a taking forbidden by the Constitution, the ILEC must pass those

costs attributable to the exempted ESPs through to its other customers. This would result in cross-subsidization of ESPs by other end users — forcing customers of public switched network "services that are not competitive to subsidize services that are subject to competition," in violation of section 254(k). Retaining the exemption would not require ESPs to use their implicit support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended," contrary to section 254(e).

Nor is it any reason for extending preferential treatment for ESPs (para. 288) that the regulatory system was "designed for circuit-switched interexchange voice telephone." The fact is that ESPs are using the public switched network, just as voice services do, albeit more heavily.

Conclusion

Therefore, the Commission should complete its access charge reform, removing the existing flaws, and should act expeditiously to apply the same access rules to all users, including ESPs. If it proves necessary to prevent "potentially detrimental effects on the growth of the still-evolving information services industry" (para. 288), the Commission should comply with Section 254.

Respectfully submitted,
THE RURAL TELEPHONE COALITION

NRTA

By: Margot Smiley Humphrey
Margot Smiley Humphrey

NTCA

By: David Cosson ^{by} MS2
David Cosson
L. Marie Guillory

OPASTCO

By: Lisa M. Zaina ^{by} MS2
Lisa M. Zaina
Kenneth Johnson

Koteen & Naftalin, LLP
1150 Connecticut Ave., NW
Suite 100
Washington, DC 20036
(202) 467-5700

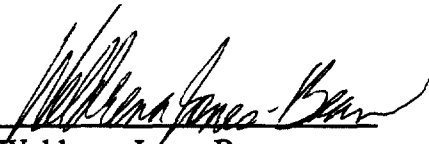
2626 Pennsylvania Ave., NW
Washington, DC 20037
(202) 298-2300

21 Dupont Circle NW
Suite 700
Washington, DC 20036
(202) 659-5990

CERTIFICATE OF SERVICE

I, Weldrena Jones-Bean, do certify that on this 24th day of March, 1997, two true and correct copies of the "Comments of The Rural Telephone Coalition" were served upon the following:

Competitive Pricing Division
Common Carrier Bureau
Room 518
1919 M Street, NW
Washington, DC 20554

/s/ 
Weldrena Jones-Bean